

HOUSE BILL 3515
By Casada

AN ACT to amend Tennessee Code Annotated, Title 53,
Chapter 3, relative to the production and sale of
unpasteurized dairy products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 3, is amended by adding
the following language as a new, appropriately designated part:

53-3-401. The purpose of this part is to:

- (1) Recognize, protect and assure the right of all of the citizens of the state of
Tennessee to exercise the "freedom of choice" to access and purchase raw
(unpasteurized) milk;
- (2) Recognize, protect and assure the right of farmers to produce, distribute,
market and sell raw milk and raw milk products directly to consumers;
- (3) Recognize the need to build "value-added food products" that can sustain,
differentiate and economically support family farms and agricultural businesses; and
- (4) Set the basic standards under which the safety of raw (unpasteurized) milk
will be tested and regulated by the state of Tennessee.

53-3-402.

As used in this part, unless the context otherwise requires:

- (1) "Producer of unpasteurized dairy products" means any farmer or
artisan who harvests or produces unpasteurized dairy products for sale to the
public. "Producer" shall not be construed to mean farmers or artisans who
produce or harvest unpasteurized dairy products for their own private
consumption or via herd share/farm share/cow or goat boarding agreements

("agistments") nor shall it be construed to mean any farmer or artisan who produces or harvests less than one hundred (100) gallons of unpasteurized milk per week. These shall be recognized as legal and sound, and shall be totally and completely exempted from any and all permits, fees, inspections and restrictions of any kind on production and sales of unpasteurized dairy products.

(2) "Unpasteurized dairy product" means a dairy product that has not undergone the process of pasteurization as defined in the rules and dairy division of the department of agriculture and/or the PMO.

(3) "Department" means the state department of agriculture.

53-3-403. Producers wishing to sell unpasteurized dairy products for the retail market shall be required to meet and comply with all grade A standards as set forth in the Tennessee dairy code, except for the pasteurization and bottling and capping clauses.

53-3-404. Producers wishing to sell unpasteurized dairy products for non-retail sales, off the farm or delivered directly to the consumer shall be exempted from the Tennessee dairy code and subject to the provisions set forth in this bill.

53-3-405. The department of agriculture shall also require all producers to submit proof of the successful completion of a state-approved raw milk safety course. Such course shall include both classroom hours and on the farm, hands-on training hours.

53-3-406. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, title 4, chapter 5.

53-3-407.

(a) Notwithstanding any provision of the law to the contrary, producers of unpasteurized dairy products who sell such products directly to consumers are exempt from the provisions of title 53, chapters 1 through 3.

(b) This section shall apply to all producers of unpasteurized dairy products who maintain any ruminant mammal, including, but not limited to, cattle, goats, sheep or buffalo.

(c) No permits or fees shall be required by the state to become a non-retail producer of unpasteurized dairy products.

53-3-408.

(a) Producers of non-retail unpasteurized dairy products shall have their fresh raw unpasteurized milk samples tested once a month by a state inspector for bacteria analysis and the presence of human pathogens, including: *Listeria monocytogenes*, *E coli* 0157 and *Salmonella*.

(b) The state inspector shall take a total of two (2) milk samples from the herd. The samples shall be sealed and labeled with serial numbers, with the first sample being tested by the state, and the second sealed sample with a consecutive serial number to be kept by the farmer.

(c) A state-approved independent lab shall perform tests on samples taken pursuant to this section. The lab shall send results of the tests by fax, and subsequently by mail, to the producer and the state simultaneously upon completion of tests at the lab.

(d) Bacteria samples will be analyzed for standard plate count (SPC). The SPC must be at or below twenty thousand (20,000) total bacteria per milliliter, as per the PMO.

(e) If the SPC exceeds twenty thousand (20,000) total bacteria per milliliter or if any human pathogens are detected, then the second sealed sample in the farm's possession will be retested and sent to a second state-approved lab. If the re-test shows excessive bacterial count or the presence of pathogens, milk sales shall be suspended and the farm shall be re-tested by the state within three (3) business days until three (3) consecutive daily tests indicate levels are within the benchmark or free and clear of pathogens. Once three (3) consecutive tests show a count within the benchmark or show no pathogens, then raw milk sales may resume.

(f) During the suspension of the farmer's sales, the farmer may pasteurize his milk according to the Tennessee dairy code specifications for time and temperature only, and continue to sell it in such form.

(g) All animals shall be tested annually for tuberculosis and brucellosis and must have negative test results. A positive test for tuberculosis or brucellosis shall require the herd to be certified tuberculosis and brucellosis-free.

(h) Records of all milk and animal tests shall be kept at each farm for two (2) years.

(i) All producers of unpasteurized milk and dairy products shall establish and maintain a record or file of all consumer complaints. Such record shall contain details of the nature of the complaint, consumer names, date, contact information, and the date of the suspected milk collection. Upon request, these records shall be made available by mail or fax to authorized state health or agriculture inspectors. All records shall be kept by the producer for a minimum of three (3) years.

53-3-409.

(a) All unpasteurized milk shall be drawn and collected in a clean and sanitary manner. All raw milk shall be chilled at or below 40 degrees (40°) Fahrenheit within two (2) hours of the initiation or completion of milking.

(b) All unpasteurized milk shall be filtered using a standard dairy milk filter or equivalent.

(c) All unpasteurized milk held for direct human consumption must be kept continuously chilled at or below 40 degrees (40°) Fahrenheit until its delivery to the consumer.

(d) All unpasteurized dairy products, including but not limited to, cheeses, kefir, and yogurt requiring aging or temperatures higher than 40 degrees (40°) shall be stored at or below 40 degrees (40°) upon completion of production and not before. Upon completion of production when in their final form, such products shall be kept continuously chilled at or below forty degrees (40°) Fahrenheit until delivery to the consumer.

(e) This section does not require chart temperature recorders. The use of a standard thermometer is adequate to meet the intent of the section.

(f) The milking and milk handling area shall be inspected by the department on a semi-annual basis for general cleanliness and cooling and storage capabilities. Such areas shall not be required to use specific infrastructure or equipment.

(g) All lactating animals that are producing raw milk for human consumption must be allowed access to pasture three hundred sixty-five (365) days of the year, one hundred percent (100%) of the time whenever possible.

(h) All natural feeds shall be fed to the lactating animal, including only

feeds of natural origin and part of the natural diet eaten by cows. Such diet includes natural corn, barley, wheat or forages but not soy or cottonseed or other unnatural processed feeds. No silage or haylage shall be permitted, nor shall organic donuts, organic soybean meal and organic potato chips be permitted.

53-3-410.

All retail and non-retail unpasteurized dairy products shall be labeled with:

(1) A standard government food safety warning which states:

Raw Product-Government Safety Warning:

Raw products may contain disease-causing microorganisms. Persons at highest risk from these organisms include newborns and infants, the elderly, pregnant women, those taking antibiotics and antacids, and those having chronic illness or other conditions that weaken their immunity;

(2) The production date of the product;

(3) The producer's name and contact information;

(4) A label clearly indicating the contents of the product; and

(5) The weight or amount of the product contents.

53-3-411.

(a) All unpasteurized milk and milk products shall be bottled or packaged on the farm where produced. Bottling and capping shall be done in a sanitary manner by hand or by means utilizing sanitary equipment and operations.

(b) Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean, dry place until used. The cap or cover shall cover the pouring lip to at least its largest diameter.

53-3-412.

(a) Non-retail unpasteurized dairy products may be sold or offered for public consumption on the farm premises, or delivered to the consumer, being maintained either frozen or at or below the required 40 degree (40°) Fahrenheit holding temperature, to farmers markets or other such places as the producers and consumers may mutually agree to arrange or utilize.

(b) Any retail or non-retail producer of unpasteurized dairy products may sell unlimited amounts of products, providing these products meet the standards set forth by this act.

(c) Any retail or non-retail producer of unpasteurized dairy products may advertise and promote the sale of such products without limitation so long as the provisions of title 53, chapter 1, and of this part are satisfied in regard to each product.

53-3-413.

If an authorized state health department is able to trace a confirmed illness or pathogen to a particular producer, the farm shall not be sued by the state, or otherwise shut down. The producer shall correct the problem and, once the testing and benchmark requirements as specified in §53-3-405 are met, such producer's operations, production, distribution and raw milk sales shall continue.

53-3-414.

Should a regional outbreak of a pathogen occur and it is suspected to come from a particular raw milk producer, no state health department official shall discuss

any aspects of the case with anyone outside the department or speak to the press or any media entity regarding the case until the pathogen is definitively and incontrovertibly linked to the farm by two (2) separate independent state-approved labs and all testing procedures are followed in accordance with §53-3-405.

53-3-415.

Each producer of unpasteurized dairy products shall be responsible for the health and safety of the products they produce and offer for sale. Concurrently, raw dairy consumers are on fair notice with posting of the mandatory "Raw Product-Government Safety Warning", which clearly indicates the living nature of raw dairy products.

53-3-416.

A violation of the provisions of this part is a Class C misdemeanor.

53-3-417.

It is the duty of the district attorney general of the judicial district in which the commissioner reports a violation of this part, to investigate, refer and prosecute charges if and when the district attorney general, in the exercise of sound discretion, deems such an action to be proper.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2006 the public welfare requiring it.